THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
RONALD HODGES,	)	
Employee	)	OEA Matter No. J-0419-10
	)	
v.	)	Date of Issuance: January 24, 2011
	)	
DISTRICT OF COLUMBIA OFFICE	)	
OF THE INSPECTOR GENERAL,	)	MONICA DOHNJI, Esq.
Agency	)	Administrative Judge
	)	

Camilla McKinney, Esq., Employee's Representative
Keith Van Croft, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On September 24, 2010, Ronald Hodges ("Employee") filed a petition for appeal with the Office of Employee Appeals ("OEA") contesting the District of Columbia Office of the Inspector General's ("Agency") decision to terminate him. Employee noted in his appeal that by terminating him without a hearing, Agency violated his due process rights. Employee requested that his position be reinstated; any records relating to the reasons for his termination and absent without leave ("AWOL") be expunged; and that Agency pay his attorney's fees and back pay. Employee also noted in his appeal that he had a Career Service appointment and was employed by Agency on August 31, 2008.

Agency was notified on October 10, 2010, of Employee's petition for appeal and on November 10, 2010, Agency filed an answer to the appeal incorporating a Motion to dismiss for lack of jurisdiction. Agency asserted that OEA lacked jurisdiction to consider Employee's appeal because Employee was an "at-will" employee under the Management Supervisory Services ("MSS"). Agency highlighted that although Employee began working for Agency on April 03, 2006 as an Auditor with a Career Service appointment, Employee was converted on March 16, 2008 to the MSS when he was promoted to Supervisor Auditor. Employee received his final MSS promotion on August 31, 2008. The matter was assigned to me on January 10, 2011. After

reviewing the documents on record, I decided that an evidentiary hearing was unwarranted in this matter. This record is now closed.

JURISDICTION

The jurisdiction of this Office, pursuant to *D.C. Official Code, § 1-606.03 (2001),* has not been established.

ISSUE

Whether this appeal should be dismissed for lack of jurisdiction.

ANALYSIS AND CONCLUSION

The threshold issue in this matter is one of jurisdiction. This Office's jurisdiction is conferred upon it by law, and was initially established by the District of Columbia Comprehensive Merit Personnel Act of 1978 ("CMPA"), D.C. Official Code §1-601-01, *et seq.* (2001). It was amended by the Omnibus Personnel Reform Amendment Act of 1998 ("OPRAA"), D.C. Law 12-124, which took effect on October 21, 1998. Both the CMPA and OPRAA confer jurisdiction on this Office to hear appeals, with some exceptions. According to 6-B DCMR § 604.1, this Office has jurisdiction in matters involving District government employees appealing a final agency decision affecting:

(a) A performance rating resulting in removal;
(b) An adverse action for cause that results in removal, reduction in grade, or suspension for 10 days or more; or
(c) A reduction-in-force.

However, under D.C. Personnel Regulations, Chapter 16, Part I, § 1600, adverse action protections are afforded only to Career Service Employees. Section 1600.3(g) specifically states that employees in the MSS are excluded from coverage. Thus, the procedural protections (notice and hearing rights) applicable to Career Service employees are not applicable to MSS employees. Moreover, D.C. Official Code § 1-608.01(a) excludes MSS from the Career Service; thereby, preventing them from claiming these protections. Furthermore, D.C. Official Code §1-609.51 provides in pertinent parts that, "persons appointed to the Management Supervisory Service are not in the Career….Service." Here, Agency's *Exhibit B*, #5-B[1] shows that Employee was converted to a MSS employee when he was promoted to his current position. As a result, effective March 16, 2008, this Office no longer has jurisdiction over Employee.

OEA has consistently held that it lacks jurisdiction over "at-will" employees.[2] D.C. Official Code *§*1-609.54(a) provides that, an appointment to a position in MSS shall be an at-will

[1] Standard Form 50 – "Notification of Personnel Action - March 16, 2008."
[2] *Hodge v. Department of Human Services,* OEA Matter No. J-0114-03 (January 30, 2004); *Clark v. Department of Corrections,* OEA Matter No. J-0033-02, Opinion and Order on Petition for Review (February 10, 2004); *Jenkins v. Department of Public Works,* OEA Matter No. 1601-0037-01, Opinion and Order on Petition for Review (April 5,

appointment. And it is well established in the District of Columbia that, an employer may discharge an at-will employee "at any time and for any reason, or for no reason at all."[3] District Personnel Manual ("DPM") Chapter 38, § 3919.1 further highlights that a person serving in MSS shall serve at the pleasure of the appointing personnel authority, and may be terminated at any time. Therefore, upon being converted to MSS on March 16, 2008, Employee was rightfully classified as an at-will employee, with no expectation of continued employment and subject to termination at any time.

While Employee maintains that his due process rights were violated by Agency, for due process to come into play in the area of public employment, Employee **must** have a legitimate claim of entitlement to it. Specifically, the employee must show that a protected liberty or property interest is implicated.[4] A District of Columbia employee who has an at-will appointment has no property interest in continued employment, and therefore, is not entitled to a hearing prior to termination, as there is no objective basis for believing that the employee would continue to be employed indefinitely.[5] Hence, as an at-will employee, Employee has no liberty or property interest in continued employment for due process purposes and as such, Employee has no legitimate due process claim. For these reasons, the petition for appeal must be dismissed for lack of jurisdiction.

ORDER

The matter having been considered, it is hereby,

ORDERED that Agency's Motion to Dismiss is **GRANTED**: and it is

FURTHER ORDERED, that Employee's Petition is **DISMISSED**.

FOR THE OFFICE:

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MONICA DOHNJI, Esq.
Administrative Judge

2006); and *Minter v. D.C. Office of Chief Medical Examiner,* OEA Matter No. J-0116-07, Opinion and Order on Petition for Review (July 22, 2009).

[3] *Bowie v. Gonzalez,* 433 F.Supp.2d 24 (D.D.C 2006); citing *Adams v. George W. Cochran & Co.,* 597 A.2d 28, 30 (D.C. 1991).

[4] *Grant v. District of Columbia*, 908 A.2d 1173, 1179 (D.C. 2006).

[5] *Ekwem v. Fenty*, 666 F. Supp.2d 71, 78 (D.D.C. 2009).